

87-1144

No. \_\_\_\_\_

Supreme Court, U.S.  
**FILED**

DEC 12 1987

JOSEPH F. SPANIOL, JR.  
CLERK

---

**IN THE  
SUPREME COURT  
OF THE UNITED STATES**

October Term, 1987

In Re MERRELL G. VANNIER,  
  
Petitioner,

---

**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF MISSOURI**

**ROBERT N. HARRIS**  
Attorney at Law  
617 South Olive Street  
Suite 915  
Los Angeles, California 90014  
(213) 626-3271

**OF COUNSEL:**

**H. PETER YOUNG**  
Attorney at Law  
1500 South Holt Avenue, No. 1  
Los Angeles, California 90035  
(213) 659-3355

Attorneys for Petitioner

---

---

25 P/2



## QUESTION PRESENTED

Whether a state may, consistently with the requirements of the due process clause of the Fourteenth Amendment, disbar an attorney summarily without any hearing on the basis of a sister state's adjudication of professional misconduct and disbarment when the attorney has raised claims of mitigating circumstances and rehabilitation which, if valid, would have a material bearing under state law on the issue of whether disbarment is appropriate, and/or when the attorney has raised a claim that the sister state's adjudication was constitutionally deficient and unfairly reached because he was not afforded the opportunity to confront and cross-examine the witnesses against him.

12

## TABLE OF INDEX

---

	<u>Page</u>
QUESTION PRESENTED	i
Table of Authorities	iii
OPINIONS BELOW	2
JURISDICTIONAL STATEMENT	2
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	8
I. THE ORDER BELOW PRESENTS IMPORTANT, UNDECIDED AND RECURRING QUESTIONS SURROUNDING THE PROCEDURAL DUE PROCESS RIGHTS OF ATTORNEYS IN DISCIPLINARY PROCEEDINGS BROUGHT IN ONE STATE ON THE BASIS OF MIS- CONDUCT ADJUDICATED IN SISTER STATE PROCEEDINGS.	8
CONCLUSION	16
APPENDIX	



# TABLE OF AUTHORITIES

---

<u>Cases</u>	<u>Page</u>
Goldberg v. Kelly (1969) 397 U.S. 254	10, 15
In re Ming, 469 F.2d 1352 (7th Cir. 1972)	10, 13, 15
In re Ruffalo (1968) 390 U.S. 543.550	9, 14
In re Weiner (1977) 530 S.W.2d 222, quoting in part Florida Bar v. Wilkes (Fla. 1965) 179 So.2d 193	11
In re Williams (1939) 128 S.W.2d 1098, quoting In re A. Sherin (1916) 27 S.D. 232, 130 N.W. 761	12
Selling v. Radford (1911) 243 U.S. 46	15
The Florida Bar v. Vannier (1986) 498 So.2d 896	4, 7
United States v. Hicks, 37 F.2d 289 (9th Cir. 1930)	10, 15
Willner v. Comm. on Character & Fitness (1963) 373 U.S. 96	10, 15





## Constitution

United States Constitution,  
Fourteenth Amendment  
Section 1

i, 2

## Federal Rules and Statutes

Missouri Supreme Court Rule,  
Rule 5.19

4

Title 28 United States Code,  
Section 1257(3)

2



IN THE  
SUPREME COURT  
OF THE UNITED STATES

October Term, 1987

In Re MERRELL G. VANNIER,

Petitioner.

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF MISSOURI

---

The petitioner, Merrell G. Vannier, respectfully prays that a writ of certiorari issue to review the judgment and order of the Supreme Court of Missouri entered in this proceeding on September 15, 1987.

THE  
FACULTY  
OF THE UNIVERSITY OF TORONTO

IN SENATE

RESOLVED THAT

THE

UNIVERSITY OF TORONTO LIBRARY  
100 St. George Street, Toronto, Ontario

THE UNIVERSITY OF TORONTO LIBRARY  
100 St. George Street, Toronto, Ontario  
M5S 1A5  
CANADA  
TEL: (416) 978-2811  
FAX: (416) 978-2812  
WWW: www.library.utoronto.ca

## OPINIONS BELOW

The order of the Supreme Court of Missouri, which is not reported, appears in the Appendix attached hereto.

## JURISDICTIONAL STATEMENT

The order of the Supreme Court of Missouri was entered on September 15, 1987, and this petition is filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

## CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part:

the year of the ...  
... ..  
... ..

...

The ... ..  
... ..  
... ..  
... ..  
... ..  
... ..

...

... ..  
... ..  
... ..

"No State shall enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### STATEMENT OF THE CASE

Petitioner was admitted to the practice of law in Missouri in September, 1975 and in Florida in July, 1976. On November 26, 1986, as a result of misconduct which occurred ten years previously in 1976, he was disbarred by order of the Supreme Court of Florida over the dissent of two justices who would have suspended him from practice for 90 days because of several mitigating factors: his youth at the time of the misconduct, the passage of ten years with no subsequent ethical





problems, and the facts that his misconduct did not injure any party and did not violate any law. See The Florida Bar v. Vannier, 498 So.2d 896 (1986).<sup>1</sup>

On June 25, 1987, the Supreme Court of Missouri issued an order to show cause to petitioner pursuant to Missouri Supreme Court Rule 5.19, which is entitled "Reciprocal Discipline for Misconduct" and which reads:

"Upon receipt of information that an attorney admitted to practice in Missouri has been adjudged guilty of professional misconduct in another jurisdiction, this Court shall cause to be served on said attorney an order to show cause why said adjudication should not be conclusive of said misconduct for the purpose of discipline by this Court."

---

<sup>1</sup> The Florida charges were not brought until April 1980 and were not tried until 1985 due, in part, to the fact that petitioner had voluntarily refrained from practicing law there or in any other state while the charges were pending.



Mr. Vannier, who then resided in California, filed in pro se papers in response to the order to show cause in which he argued that Missouri case law required Missouri to make an independent determination as to whether misconduct adjudged in a sister state warranted discipline in Missouri and, if so, the extent of the discipline. He claimed that the penalty of disbarment in Missouri was inappropriate because of various mitigating factors: the conduct leading to the Florida disbarment occurred between May 1976, and May, 1977; he was at the time only one year out of law school; he had not harmed his clients, as the Florida Bar had conceded; he had not violated any statutory law; he had an unblemished record since the events at issue; he had been born, raised and educated in Missouri and had prac-

Mr. [Name] was [position] of [organization] [location] [date] [time] [day] [month] [year] [page number]

[The following text is extremely faint and largely illegible. It appears to be a formal letter or report, possibly discussing organizational matters, personnel, or a specific project. The text is organized into several paragraphs, with some lines starting with capital letters. Due to the low contrast and quality of the scan, the specific words and sentences cannot be accurately transcribed.]

[Illegible text continues in several paragraphs, ending with a signature block area.]

ticed law in Missouri since the events at issue (in 1978 and 1979) without disciplinary problems; he was of current good moral character; there was no basis to find that he would likely engage in future misconduct; and he was fit to continue to practice law in Missouri.

Petitioner also argued in his papers responding to the order to show cause that due process of law prohibited Missouri from adopting the Florida findings of misconduct because, inter alia, those findings were based on the admission of massive undifferentiated hearsay evidence which had deprived him of his fundamental rights to confront and cross-examine the witnesses against him, and that he was in fact not guilty of the misconduct charged against him. He noted that the Florida Supreme Court had rejected his due process arguments with the observation that



"[i]n Bar disciplinary cases, hearsay is admissible and there is no right to confront witnesses face to face." See 498 So.2d at 898.

Accordingly, invoking his rights to procedural due process of law, he asked the Missouri Supreme Court to afford him a fair and proper hearing on the issues raised in his papers. However, on September 15, 1987, the Missouri Court ruled that petitioner had "failed to show just cause why the adjudication of the Supreme Court of Florida should not be conclusive of the misconduct found by that Court for the purpose of discipline by this Court," and summarily issued an order disbarring him.

1/10/1910 The following is a list of the  
names of the persons who have been  
admitted to the office of the  
Registrar of the County of  
Durham since the 1st of January  
1910.

Admitted to the office of the  
Registrar of the County of  
Durham since the 1st of January  
1910.

1. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.

2. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.

3. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.

4. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.

5. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.

6. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.

7. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.

8. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.

9. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.

10. Mr. J. H. Smith, Esq.,  
of the County of Durham,  
has been admitted to the office  
of the Registrar of the County  
of Durham, and has taken the  
oath of office.



## REASONS FOR GRANTING THE WRIT

### I

THE ORDER BELOW PRESENTS IMPORTANT, UNDECIDED AND RECURRING QUESTIONS SURROUNDING THE PROCEDURAL DUE PROCESS RIGHTS OF ATTORNEYS IN DISCIPLINARY PROCEEDINGS BROUGHT IN ONE STATE ON THE BASIS OF MISCONDUCT ADJUDICATED IN SISTER STATE PROCEEDINGS.

The practice of law, of course, increasingly transcends state boundaries, and the resulting increase in the number of attorneys admitted to practice in more than one state inevitably has resulted in a drastic increase in disciplinary proceedings brought in one state on the basis of sister state adjudications of professional misconduct. The extent to which procedural due process must be afforded an attorney in such a proceeding--or, put another way, whether one

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION  
PUBLISHED WEEKLY  
CHICAGO, ILL., U.S.A.  
Subscription price, \$5.00 per annum in advance.  
Single copies, 15 cents.  
Entered as Second-Class Matter, October 3, 1917.  
Postpaid.  
Acceptance for mailing at special rate of postage provided for in Act of October 3, 1917.  
Copyright, 1918, by American Medical Association.

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was organized in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are physicians, surgeons, dentists, and other medical practitioners. The Association's principal activities are the publication of the Journal of the American Medical Association, the holding of annual meetings, and the advocacy of legislation and public health measures. The Journal is one of the most important and influential medical journals in the world. It contains a wide range of articles, including original research, clinical reports, and reviews. The Association's annual meetings are held in different cities each year and attract thousands of delegates from all over the world. The Association also engages in a variety of public health and legislative activities, including the promotion of medical education, the regulation of the medical profession, and the improvement of public health services. The Association's efforts have been instrumental in the development of the medical profession in the United States and in the improvement of public health services for the American people.

state may summarily discipline an attorney on the basis of a sister state's adjudication--is thus a recurring question of profound importance to the integrity of the legal profession and thus to the administration of justice generally.

The Missouri Supreme Court summarily disbarred petitioner on the basis of the Florida Supreme Court's adjudication without affording him a hearing on his claims that the adjudged misconduct did not warrant disbarment in view of several mitigating circumstances and that the Florida findings were the product of constitutionally defective proceedings. There can be no question since In re Ruffalo, 390 U.S. 543.550 (1968), that

"[d]isbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer,"



and that

"[h]e is accordingly entitled to procedural due process of law, which includes fair notice of the charge" and "opportunity . . . for explanation and defense."

The process which is due certainly includes the right to an evidentiary hearing replete with the opportunity to confront and cross-examine witnesses providing evidence supporting the charge, to present evidence in one's own favor and to argue one's cause in person. See, e.g., Goldberg v. Kelly, 397 U.S. 254 (1969); Willner v. Comm. on Character & Fitness, 373 U.S. 96 (1963); In re Ming, 469 F.2d 1352 (7th Cir. 1972); United States v. Hicks, 37 F.2d 289 (9th Cir. 1930).

That petitioner received a hearing in the Florida proceedings is no justification for the peremptory manner in



which the Missouri Supreme Court disposed of his career. First, the Missouri court itself has declared that Missouri will make "its own independent judgment" as to the effect to be given a sister state's adjudication of disbarment or discipline after "fully inform[ing itself] of the nature of the misconduct and all the attendant circumstances" by considering "all available sources which can properly be utilized," including all evidence properly offered in the forum state's proceeding and the record of the sister state proceedings, and that it "may accordingly order discipline which is more or less stringent than that awarded by the sister state." In re Weiner, 530 S.W.2d 222, 224-25 (1977), quoting in part Florida Bar v. Wilkes, 179 So.2d 193, 197 (Fla. 1965). Furthermore, like other states, Missouri has recognized





that the lawyer's rehabilitation or reformation may affect its disciplinary determinations:

"'It is and should be the policy of the law to forgive one his errors long since past, and not to allow the same to be resurrected, where there is nothing to show but that for several years after such wrongdoing the party may have lived an exemplary life.'" In re Williams, 128 S.W.2d 1098, 1107 (1939), quoting In re A. Sherin, 27 S.D. 232, 130 N.W. 761, 762 (1916).

Petitioner claimed before the Missouri Supreme Court that the misconduct found in Florida occurred more than ten years previously, when he was a recent law school graduate, and that it was the only blemish on his record, and that he was currently of good moral character and fitness to continue to practice law in Missouri. In disbarring him without affording him a hearing at which he could have tried to prove his claim of mitigat-



ing circumstances and that he had been rehabilitated and was currently fit to practice--claims which, if valid, had material bearing under state law on the issue of whether petitioner should be disbarred--the Missouri court deprived petitioner of procedural due process of law. See In re Ming, 469 F.2d at 1356 (suspension ordered without hearing on basis of misdemeanor criminal conviction because not "every Tom, Dick and Harry of a misdemeanor would serve as a basis for suspension" and because "[e]xtenuating circumstances tending toward a minimization of the penalty very probably would require a hearing for proper development").

Second, that petitioner received a hearing in Florida does not justify the Missouri court's summary disbarment because it failed to give him the oppor-



tunity to prove his claim that the Florida proceedings suffered a fatal constitutional defect in that the admission of huge amounts of hearsay evidence deprived him of his due process rights to confrontation and cross-examination. This court has held that a disbarment in one jurisdiction may not be given conclusive effect in another jurisdiction if in the first proceeding the attorney was deprived of the procedural due process requirements of fair notice of the charge. In re Ruffalo, 390 U.S. 544. The Court there declared, "One of the conditions this Court considers in determining whether disbarment by a State should be followed by disbarment here is whether 'the state procedure from want of notice or opportunity to be heard was wanting in due process.'" 390 U.S. at 550, quoting



Selling v. Radford, 243 U.S. 46, 51 (1911).

Petitioner pointed out to the Missouri court that the Florida Supreme Court had held in his case that due process of law does not require personal confrontation of witnesses in disciplinary proceedings, and he pointed to case law indicating that the rights to confront and cross-examine the witnesses against him--rights which are essential to the adversarial search for truth and thus the integrity of the fact-finding process--are in fact a due process requisite in such proceedings. See, e.g., Goldberg v. Kelly, 397 U.S. at 269; Willner v. Comm. on Character & Fitness, 373 U.S. at 102-04, 108 (majority and concurring opinions); In re Ming, 469 F.2d at 1355-56; United States v. Hicks, 37 F.2d 289, 292-93. Yet the Missouri





court disbarred him without affording him any opportunity to show the Florida proceedings were constitutionally deficient; indeed, there is nothing to indicate that the court below had anything before it but the Florida court's bare opinion. Sister-state findings of fact may constitutionally be given conclusive weight only if they are fairly determined, and in failing to afford petitioner an opportunity to show that the Florida findings were unfairly reached, the Missouri court itself violated his right to due process of law.

#### CONCLUSION

For these reasons, a writ of certiorari should issue to review the order of the Missouri Supreme Court.



Respectfully submitted,

ROBERT N. HARRIS  
Attorney at Law  
617 South Olive Street  
Suite 915  
Los Angeles, California 90014  
(213) 626-3271

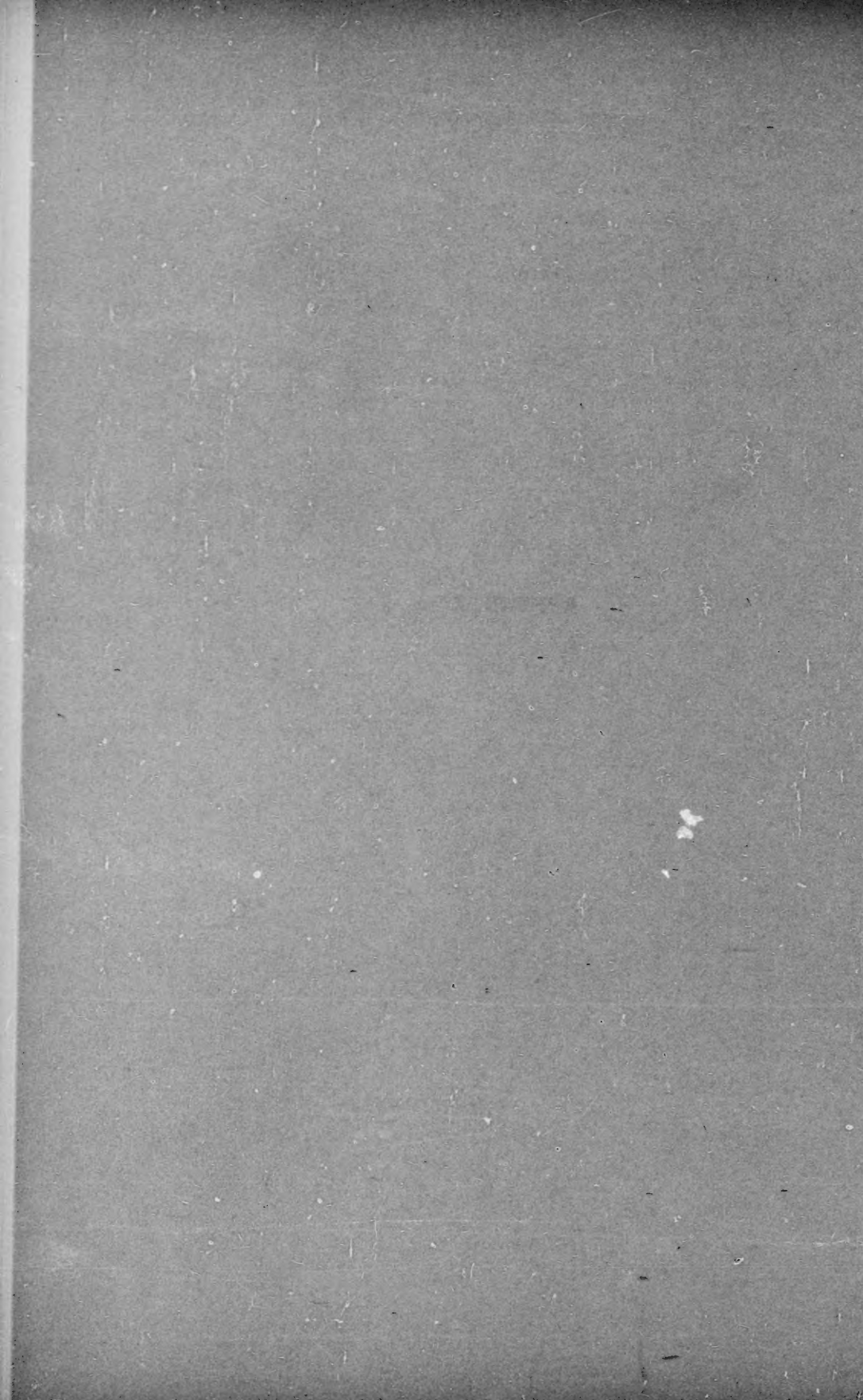
OF COUNSEL: -  
H. PETER YOUNG  
Attorney at Law  
1500 South Holt Avenue, No. 1  
Los Angeles, California 90035

Attorneys for Petitioner

December 11, 1987



## APPENDIX



APPENDIX

SUPREME COURT OF MISSOURI

en banc

September 15, 1987

In Re:	)	
	)	
MERRELL G. VANNIER,	)	No. 69552
	)	
Respondent.	)	

ORDER

The Court having been informed by Information filed by the General Chairman, Missouri Bar Administration Advisory Committee, that Merrell G. Vannier was disciplined and disbarred by the Supreme Court of Florida on November 26, 1986, and,

The said Merrell G. Vannier having failed to show just cause why the adjudication of the Supreme Court of Florida should not be conclusive of the

REPORT OF THE COMMISSIONER OF THE LAND OFFICE

IN

THE YEAR 1871

1871

1871

1871

1871

The first meeting of the Board of Commissioners was held on the 1st day of January, 1871, at the City of New York. The Board was organized by the election of the following members: John A. Dix, President; John B. Allen, Vice-President; and John C. Smith, Secretary. The Board has since that time held regular meetings, and has been engaged in the consideration of the various matters relating to the public lands of the State.

1871

The Board has also held several public hearings, and has received many suggestions from the people of the State. It has also been engaged in the preparation of a report on the condition of the public lands, and on the measures which should be taken to improve them. This report is now being prepared, and will be submitted to the Legislature at the next session.



misconduct found by that Court for the purpose of discipline by this Court,

It is ordered that Merrell G. Vannier be and he is hereby disbarred, that his right and license to practice law in this State is canceled and terminated and that his name is stricken from the roll of attorneys in this State.